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16
17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**
20

21 IN RE: UBER TECHNOLOGIES, INC.,
22 PASSENGER SEXUAL ASSAULT
LITIGATION
23

24 This Document Relates To:
25 ALL ACTIONS
26

Case No. 3:23-md-03084-CRB

**JOINT CASE MANAGEMENT
STATEMENT**

Judge: Hon. Charles R. Breyer
Courtroom: 6 – 17th Floor

Date: November 6, 2024
Time: 11:00 a.m.

JOINT CASE MANAGEMENT STATEMENT

Defendants Uber Technologies, Inc., Rasier, LLC, Rasier-CA, LLC (collectively “Uber”), and Plaintiffs’ Co-Lead Counsel (collectively referred to herein as “the Parties”), respectfully provide this Joint Case Management Conference Statement and Proposed Agenda in advance of the Case Management Conference scheduled for November 6, 2024.

Proposed Agenda

1. **Status of Case Filings and Request to Set a Case Filing Cut-Off Date**
2. **Motions to Dismiss**
3. **Plaintiffs’ Request for Trial Dates**
4. **Motions to Transfer**
5. **Additional Discovery Requests**
6. **General Discovery Updates**
7. **Discovery Coordination Order**
8. **Order Regarding Time Period for Discovery**
9. **Cases Where Plaintiffs’ Counsel Withdrew**
10. **Special Settlement Master**
11. **Next Case Management Conference**

I. Status of Case Filings and Setting a Case Filing Cut-Off Date

1. Number of MDL Case Filings

As of November 4, 2024, there are currently 1,425 cases in this MDL. Since the Parties submitted the Joint Case Information Chart to the Court on September 30, 2024, four complaints have been amended, and 94 new cases have been filed.¹

2. Status of JCCP

There are approximately 496 cases involving California incidents pending in the JCCP.

¹ The newly filed cases allege incidents across 29 states. The Parties can provide promptly a supplement to the Court with an updated chart.

1 **Plaintiffs' Position:** A list of other proceedings known to Plaintiffs is attached as **Exhibit**
2 **A.** Consistent with Defendants' obligations pursuant to Pretrial Order No. 19, and to promote
3 coordination and facilitate discovery of other related incidents, Plaintiffs request that Uber
4 maintain and provide at each status conference a current list of all non-JCCP state court and non-
5 MDL federal proceedings involving allegations that an Uber driver engaged in sexual assault or
6 misconduct with a passenger. Likewise, to facilitate discovery of relevant information without
7 the need to send requests, Plaintiffs request that Uber maintain and provide at each status
8 conference a current list of regulatory and governmental actions and investigations related to
9 sexual assault on the Uber platform. It is needlessly burdensome for Plaintiffs to continuously
10 search and update this list when the information is easily available to Uber.

11 **Defendants' Position:** The Court should not order Uber to create, manage, and update a
12 list that tracks the details of each and every publicly available litigation where Uber is a defendant
13 in a sexual assault case around the country. Nothing in Pretrial Order 5, let alone any other
14 Pretrial Order in this MDL, requires this list. The relevant cases to track for purposes of
15 managing the instant MDL are the cases currently pending before this Court and the JCCP state
16 court proceedings. By virtue of the centralized MDL proceedings that Plaintiffs sought, and the
17 JPML ordered, this Court is aware of and actively managing all relevant federal litigations. As to
18 non-JCCP (*i.e.*, non-California) state court litigation, Plaintiffs have not shown how a list that
19 tracks other state court proceedings in other states outside California would benefit the Parties or
20 the Court.

21 **3. Defendants' Request For a Filing Cut-Off**

22 **Defendants' Position:** Defendants believe it is appropriate at this time to set a cut-off
23 deadline for the filing of any additional complaints to be included in this MDL.

24 As Defendants have expressed previously, a cut-off date is necessary so the Court and the
25 Parties know the parameters of this MDL, including the size and composition of the body of
26 cases. That, in turn, will guide the Court and the Parties in determining the nature and timing of
27 additional motion practice and deciding what discovery is necessary and proportionate to the
28 number and type of cases involved in the MDL. Absent a defined endpoint for filing additional

1 cases, the boundaries and scope of this MDL will remain unclear which, among other things, will
2 make the resolution of the litigation, whether contested or compromised, difficult to achieve.

3 The time to impose such a cutoff is now. This Court previously has expressed that
4 resolution of the *forum non conveniens* issue in the state court proceedings would serve as an
5 important milestone in this regard, and, in accordance with that, imposed a deadline for all cases
6 affected by that decision to file in this MDL. That deadline has now come and gone, resulting, as
7 expected, in the largest influx of cases into this MDL. The total number of cases in this MDL
8 now approximates the number of cases Plaintiffs' counsel initially estimated for the Court over a
9 year ago. And with the Court's rulings on the first tranche of motions to dismiss, it would inhibit
10 progress if new claims, involving potentially different and additive state laws, continue to be
11 filed. As such, at this time the benefits of allowing filings to continue without end is outweighed
12 by the benefits that will follow from imposing a filing deadline and allowing each side to
13 understand the parameters of this litigation. Doing so now makes facilitating resolution more
14 likely.

15 **Plaintiffs' Position:** Uber makes its oft-repeated plea for an arbitrary "cut-off" on new
16 filings in this MDL. Uber now cites the resolution of the *forum non conveniens* issue in the
17 JCCP, as well as this Court's rulings on the first motions to dismiss, as reasons to set a cut-off
18 date. But Uber continues to fail to explain why a cut-off date would facilitate resolution, just as it
19 fails to ground its ask in past practice in other MDLs or the procedural posture of this one, or
20 grapple with the undeniable fact that sexual assault survivors find it difficult to file cases and
21 should not face premature deadlines for doing so absent compelling circumstances.

22 In reality, this MDL is still in its early stages, with Uber not having yet even substantially
23 completed production in response to Plaintiffs' First RFPs (production that was supposed to be
24 done by September 1), the Magistrate Judge addressing crucial common discovery issues, and the
25 Court having just begun resolving common legal issues raised in the Master Complaint. Uber
26 cites no MDL that ever has imposed a cut-off under those circumstances, and does not articulate
27 why this Court should be the first.
28

At some point, after the pretrial common legal and discovery issues are resolved, including but not limited to Rule 702/*Daubert* issues related to general liability, and it likely will make sense to wind down the MDL. But now is not that time. Much remains to be done and the parties—both sides—have much to gain from efficiency. For example, Uber has insisted that the MDL and JCCP coordinate depositions of its employees. If a cut-off is entered prematurely, Uber faces the prospect of hundreds or even thousands of depositions managed by courts across the country.

II. Motions to Dismiss

On September 30, 2024, the Parties filed a Joint Case Information Chart pursuant to the Court’s August 29, 2024 Order. *See* ECF No. 1685.

On October 7, 2024, the Court issued Pretrial Order No. 18 (Order on Motions to Dismiss Pursuant to Florida, Illinois, and New York Law). ECF No. 1719.

1. Clarification of Vicarious Liability Claims Remaining Under Florida and Illinois Law

Defendants’ Position: The Court’s October 7, 2024 Order states that “Claim G” under the laws of Florida and Illinois is dismissed “in part.” Order at 9. Plaintiffs’ longform complaint titled “Claim G” as “Vicarious Liability for Drivers’ Torts” and asserted three theories: (1) *respondeat superior*, (2) apparent agency, and (3) ratification.

It is clear from the Court’s Order that none of those three theories survived Uber’s motions to dismiss under the laws of Florida and Illinois. First, Plaintiffs withdrew the *respondeat superior* theory under Florida law, and the Court dismissed the *respondeat superior* theory on the merits under Illinois law. Order at 2, 7–9. Second, the apparent agency theory was dismissed under Florida law pursuant to Plaintiffs’ concessions, and dismissed on the merits under Illinois law. *Id.* Third, the ratification theory was dismissed under Florida and Illinois law, pursuant to Plaintiffs’ concessions. Order at 2.

Accordingly, none of the three theories asserted under “Claim G” is viable and/or being pursued under the laws of Florida and Illinois. Uber respectfully requests that the Court issue an order clarifying that “Claim G” is dismissed in its entirety.

Plaintiffs' Position: Plaintiffs believe the Court's order was clear. Plaintiffs agree that Claim G was dismissed under the laws of Florida, Illinois, and New York, but note that the dismissal of the ratification theories should be with leave to amend, and also that common carrier vicarious liability (though not, as a formal matter, pleaded under Claim G) remains available in both states subject to the temporal limitations imposed by state TNC statutes that the Court identified. *See* ECF 1719 at 4 (noting that Florida's vicarious liability limitation became effective only on June 23, 2020); *id.* at 5 (noting that Florida's common carrier limitation became effective only on July 1, 2017); *id.* (noting that Illinois's common carrier limitation was repealed January 1, 2024).

2. Next Steps for Motions to Dismiss

a. Next Round of Motions to Dismiss

Defendants' Position: Uber proposes that the next round of Motions to Dismiss should be based on the laws of the five states with the most numerous incidents of the remaining states: Georgia, Nevada, Pennsylvania, Virginia and Arizona. As discussed in the Parties' September 30, 2024 joint letter to the Court, Uber's position is that the incident state's law is the applicable law. As to the form of the next round of Motions to Dismiss, Uber is prepared to either conduct a full briefing schedule or submit position papers applying the Court's legal analysis in prior orders, depending on the Court's preference.

The Court's August 15, 2024 Order on Motions to Dismiss Pursuant to California and Texas Law granted Uber's motions to dismiss Plaintiffs' fraud claims and product liability claims on the basis that Plaintiffs failed to include individualized pleadings. As the Court concluded, "it is not possible to assess any of the fraud claims without knowing what representations a particular person saw and relied on." Order at 36. As to product liability, the Court explained that Plaintiffs' claims must be dismissed because of "the absence of individual allegations that make the causation allegations plausible." Order at 47. Plaintiffs' September 13, 2024 position paper on the motions to dismiss under the laws of Florida, Illinois, and New York acknowledged the defect in their pleadings, and conceded that their fraud and product liability claims should be dismissed with leave to amend. Plaintiffs' Position Paper at 3, 5. The Court's October 7, 2024

1 Order accordingly dismissed those claims. Consistent with the Court’s reasoning and Plaintiffs’
2 concessions, Uber proposes that the Parties stipulate that Plaintiffs’ fraud and product liability
3 claims should be dismissed under the laws of Georgia, Nevada, Pennsylvania, Virginia, and
4 Arizona (and all other states).

5 The Parties should also stipulate to the dismissal of Plaintiffs’ claims for injunctive relief.
6 Plaintiffs’ claims for injunctive relief are based on California’s Unfair Competition Law, and the
7 theory (which Uber has disputed) that the UCL has extraterritorial applicability to incidents that
8 occurred outside of California. Because the Court dismissed Plaintiffs’ UCL injunctive relief
9 claims on the basis that Plaintiffs lack standing, that decision should apply equally to the cases
10 involving incidents in Georgia, Nevada, Pennsylvania, Virginia, and Arizona (and all other
11 states).

12 **Plaintiffs’ Position:** The Court has indicated its intent to continue resolving cross-cutting
13 legal issues presented by the Master Complaint. If that remains the Court’s priority, Plaintiffs
14 agree that proceeding on the five states identified by Uber (Georgia, Nevada, Arizona,
15 Pennsylvania, and Virginia) would be a reasonable next step. Plaintiffs submit that standard
16 briefing, rather than position papers, is the most sensible way to present the issues to the Court.
17 Plaintiffs suggest an interim deadline for the parties to meet and confer on the claims pleaded in
18 those five states to stipulate where possible and avoid unnecessary briefing.

19 Plaintiffs agree that the issues the Court identified as individualized—fraud, strict
20 products liability, ratification, and injunctive relief—require dismissal with leave to amend under
21 the laws of every state.

22 **b. Amendment of Dismissed Claims**

23 **Defendants’ Position:** In parallel to the next round of Motions to Dismiss, all plaintiffs
24 seeking to revive dismissed claims must amend their pleadings. As discussed above, certain of
25 Plaintiffs’ claims—*e.g.*, fraud and product liability—were dismissed for pleading deficiencies
26 common across all plaintiffs’ pleadings, rather than any state-specific grounds. As the Parties
27 continue to move through additional rounds of Motions to Dismiss, those claims remain in limbo
28 so long as Plaintiffs do not amend their pleadings. There is no reason to delay the Court’s

1 determination of the viability of those claims.

2 At the August 29, 2024 case management conference, the Court indicated that amendment
3 of the pleadings can be addressed after further discovery has been completed. At this juncture,
4 Uber has produced over 1.5 million pages of documents consisting of approximately 240,000
5 corporate discovery documents from custodial and non-custodial data sources, 101,000
6 documents from prior litigations and investigations pursuant to PTO 5, 21,400 Defense Fact Sheet
7 records, and 2,300 incident reports underlying Safety Report data. Uber substantially completed
8 production for all Tranche 1 custodians on September 15, all Tranche 2 custodians on October 21,
9 and will substantially complete production for the 17 Tranche 3 custodians by November 26, as
10 set forth in PTO 20. Further, the Court indicated that amendment can wait until the Court makes
11 further rulings based on its view of the law. At the time, Uber's motions to dismiss pursuant to
12 the laws of New York, Florida, and Illinois were outstanding. Since then, those motions have
13 been resolved, and the appropriate time for Plaintiffs to amend their pleadings is now.

14 Plaintiffs' position is that they should only be required to amend the complaints of
15 bellwether trial candidates. First, as Uber explains below, it is inappropriate to narrow the
16 bellwether pool at this juncture. But even if narrowing the bellwether pool was appropriate at this
17 time—which it is not—Plaintiffs' proposal is counterproductive and will hinder any potential for
18 global resolution of the claims because the Parties will not, and may never, have a holistic sense
19 of what claims are at issue in this MDL.

20 **Plaintiffs' Position:** The Court should identify and move forward with initial trial
21 candidates, with amending those candidates' complaints being the natural next step after the cases
22 are identified, and after Uber verifies its DFS productions are complete and disputes are resolved.
23 Uber objects to that proposal, and instead proposes amending every single plaintiff complaint in a
24 very short amount of time. This will accomplish little: Uber does not intend on filing hundreds of
25 case-specific motions to dismiss, nor is it efficient for the Court to review and decide hundreds of
26 motions at this time. And Plaintiffs will always be able to rely on the liberal Rule 15 standards
27 should they choose to amend at a later date. There is also no urgent reason to do this. Uber
28 concedes that the scope of the common discovery does not depend on the remaining pleading

1 issues. And every Plaintiff, at least presumptively, has live claims including the negligence
2 claims that Uber has not challenged and requests for punitive damages that the Court has found
3 adequately pleaded in the states it has examined. Finally, any amendment deadline should be
4 tethered to Uber's substantial completion of common discovery, as well as resolution of disputes
5 over the scope and completeness of the DFS productions. The parties continue to meet and
6 confer over deficiencies in the productions, and Uber has continued to supplement case-specific
7 productions.

8 **III. Plaintiffs' Request for Trial Dates**

9 **Plaintiffs' Position:** With common discovery underway, now is an optimal time to begin
10 discussing setting trial dates. Moving toward trials will push this litigation forward, provide
11 focus and purpose to the schedule and proceedings, and respect both sides' needs for resolution
12 and closure. While there are several options for choosing which cases to prioritize, the most
13 streamlined process would involve advancing first those cases that can be tried in this venue. For
14 example, there are at least 16 cases over which it is undisputed this Court may try the claim (*e.g.*,
15 cases in which an out-of-state plaintiff was assaulted in California). Another subset of cases will
16 be those for which Uber stipulates the amended TOU/forum selection clause does not apply.
17 Plaintiffs propose that within 14 days, the parties propose joint or if necessary competing
18 proposals for a scheduling order that includes an initial trial date and interim deadlines, such as
19 verifications that each DFS production is accurate and complete, a procedure for selecting which
20 cases will comprise the first wave of trial cases, amended complaints, responsive pleadings, and
21 discovery deadlines for the first wave of cases.

22 Setting trial dates now will facilitate discussions over which cases to try, and how to get
23 from here to there. While Uber correctly points out the parties are busy with common discovery
24 depositions (and will be likely through the summer of 2025), laying the groundwork *now* for what
25 comes next (and what must be double- or even triple-tracked) is essential for moving this MDL
26 along. If the Court intends to try any cases by the end of 2025 or early 2026, the time is now to
27 get that process underway to ensure adequate time for the Court to resolve case-specific motion
28 practice and discovery. Punting decisions about trial dates and case selection until some vague

1 date in the future (as Uber would have it, after full Plaintiff discovery for all cases) will only
2 cause inefficiency and delay and push any trial into 2027—long beyond the trajectory this Court
3 has set for this matter. The PFS and DFS are designed to provide the parties with core, material
4 information about the claims so they may sort them into categories for trial. There is nothing like
5 a trial date to focus the mind —on both sides—to make sure those devices are functioning as they
6 should, and that any issues are addressed. As the Court indicated at the outset of these
7 proceedings, finding a perfectly representative “bellwether” case may be an elusive and
8 ultimately pointless exercise.

9 Uber’s continued request to transfer nearly all cases out of this MDL reinforces why it
10 makes sense for the Court and the parties to focus on the cases this Court indisputably will or
11 could try. Endless procedure and navel gazing will only delay resolution for these plaintiffs, and
12 trying these cases will have myriad efficiencies and benefits for all plaintiffs, including rulings on
13 objections to corporate witness testimony and generally applicable *motions in limine*.

14 **Defendants’ Position:** Plaintiffs take the position that the Parties should, within 14 days,
15 propose joint or competing proposals for a scheduling order that includes initial trial dates and
16 interim deadlines. Plaintiffs further casually request that the Court prematurely and immediately
17 narrow the potential bellwether cases to those in which an out-of-state plaintiff alleges
18 misconduct in California and cases for which Uber stipulates that the amended Terms of Use
19 and/or Forum Selection Clause do not apply. Plaintiffs’ proposals for selecting bellwether
20 candidates and setting trial dates are both premature and inappropriate.

21 Narrowing the bellwether pool should result from a thoughtful process involving
22 conferral, discussion, and negotiation between the Parties, not an *ad hoc* and unilateral proposal
23 from Plaintiffs. Uber is prepared to meet and confer with Plaintiffs in advance of the next case
24 management process with the goal of identifying reasonable proposals for a bellwether process, to
25 commence after further Motions to Dismiss and once appropriate discovery from the Plaintiffs
26 can be taken. Thus, if the Court is inclined to proceed with entertaining a bellwether process in
27 the near future, it should only do so after the Parties confer and discuss the issues and make
28 submissions dedicated to this topic.

1 Further, the ill-conceived nature of Plaintiffs' *ad hoc* California-specific bellwether
2 proposal is evident in Plaintiffs' attempts to narrow the potential bellwether candidates to cases
3 that (they believe) will be tried in California under California law. But this MDL consists of over
4 1,400 cases alleging incidents in 48 different states, as well as Washington, D.C. Picking only
5 one state for bellwether candidates is the antithesis of the purpose of a bellwether process: to
6 inform and encourage global resolution of the claims by providing valuable information through
7 the trial of cases that are representative of the broader pool of cases. As just one example of why
8 Plaintiffs' proposal fails to further the purpose of a bellwether process, the related JCCP action,
9 which has approximately 496 cases, all of which allege incidents in California, recently set four
10 cases for bellwether trials beginning in summer 2025.² Plaintiffs' proposal for a bellwether pool
11 would narrow the cases to almost entirely those that would similarly apply California law.³
12 When this Court selects cases for bellwether trials, it should do so with a view towards cases that
13 will assist the Parties and the Court with global resolution, including by providing valuable, new
14 information for the Parties—and should not embrace Plaintiffs' haphazard suggestion to
15 immediately advance California cases that will provide information similar to cases already set
16 for bellwether trials in the JCCP action.

17 Even if focusing all of the Parties' and Court's effort on cases in one state made sense—
18 which it does not—Plaintiffs' contention that the number of cases that will be tried in this venue
19 is currently known is incorrect. Plaintiffs erroneously assume that Uber's Motions to Transfer are
20 limited to issues involving the Terms of Use or Forum Selection Clause. But there are other
21 arguments that Uber is likely to make in the Motions to Transfer, including (as was successfully
22 argued in the JCCP, and affirmed on appeal there) that California is an inappropriate forum for
23

24 ² As another example, even accepting Plaintiffs' erroneous contentions about the Terms of Use
25 cases, those cases by definition involve either incidents from many years ago, or so-called "guest
26 riders," and thus are not likely to be representative of the overall pool and/or will present unique
27 issues.

28 ³ As became evident in the first tranche of motions to dismiss, California state law differs in
important ways from the state laws of some of the other states with the most numerous alleged
incidents.

1 most cases involving non-California incidents because witnesses, evidence, and other relevant
2 parties (namely, the independent driver alleged to have perpetrated misconduct against the
3 plaintiff) are located outside California. Since the number of cases that are likely to be tried in
4 this venue will not be known until Motions to Transfer are resolved (both in cases that involve the
5 Terms of Use, and those that do not), Plaintiffs' proposal is premature.

6 Plaintiffs casually assert that representativeness "may be an elusive and ultimately [a]
7 pointless exercise." But without all Parties' buy-in that the bellwether candidates and selected
8 cases serve at least some level of representativeness across the MDL, the bellwether process itself
9 is a pointless exercise. And, as Defendants have described herein, it is impossible for the Parties
10 or the Court to know whether the cases Plaintiffs suggest for the bellwether pool are
11 representative at this juncture. Representativeness cannot be determined while cases are still
12 being actively filed, as additional cases could significantly change the makeup of the MDL itself.
13 Therefore, any proposal for narrowing the bellwether pool cannot be responsibly accomplished
14 before a cut-off date for filing new cases has been set and has expired. Further, significant
15 information-gathering through the initial submission of Plaintiff and/or Defendant Fact sheets,
16 which will bear on any potential bellwether case's representativeness, is ongoing for
17 approximately 371 cases. Without even this basic information, the Parties and the Court cannot
18 appropriately determine representativeness with respect to potential bellwether cases. Put simply,
19 the Parties and the Court are not yet in a position to assess even basic representativeness with
20 respect to bellwether case selection and any proposal to narrow the bellwether pool at this
21 juncture is premature.

22 Rather, as described in this Case Management Statement, there is much for the Parties and
23 Court to accomplish before setting a—thoughtfully conceived—bellwether procedure or trial
24 dates. In light of the need for resolution on the motions to transfer and additional motions to
25 dismiss, the ongoing discovery process, and the need for Uber to take additional discovery from
26 Plaintiffs (as discussed below), more is to be done before the Parties and the Court have a
27 sufficiently comprehensive view of the litigation to determine an appropriate procedure for
28 selecting bellwether trials.

1 An exercise in attempting to select trial cases and establish trial dates now would do no
2 more than serve as a distraction and impediment to the work the Parties are conducting now.
3 Rather, the Parties and the Court should focus efforts on developing the relevant claims at issue in
4 this case through amendment and additional motion practice, finishing corporate discovery, and
5 beginning Plaintiff-specific discovery. These efforts will not only provide the Parties and the
6 Court with valuable information that will likely inform the best bellwether selection process, but
7 also will continue to take the full effort of the Parties in the coming months.

8 In short, the uncertainty with respect to representativeness and the known non-
9 representative qualities of Plaintiffs' proposed bellwether pool will remain until Motions to
10 Transfer have been resolved, the pleadings have been amended, further Motions to Dismiss have
11 been adjudicated, and discovery from Plaintiffs as to the facts of their cases has proceeded. These
12 uncertainties illustrate why it is premature for the Parties or the Court to propose trial dates or
13 narrow the bellwether pool at this time.

14 **IV. Motions to Transfer**

15 **Defendants' Position:** Defendants believe it is appropriate at this time for the Court to
16 also decide the proper forum of the MDL cases—specifically, for the Court to make this
17 determination for cases where the alleged underlying incident occurred in a state other than
18 California, and where the independent driver who is alleged to have committed criminal acts
19 resides in that state (or otherwise outside California).⁴ Determining the proper forum for cases at
20 this juncture equips the Parties with necessary information to move these proceedings towards
21 resolution and will spare the Court from grappling unnecessarily with thorny personal jurisdiction
22 issues involving the drivers.

23
24
25
26 ⁴ Plaintiffs suggest that Uber is asking this Court to “decide now the proper trial forum for 1,400
27 cases.” Not so. As stated, Uber’s request is limited to a more limited subset of cases in which the
28 alleged incident took place outside of California and the independent driver also resides outside
of California.

1 Without an initial determination of the proper forum in which the action should have been
2 brought, and will be tried, the Court likely will need to resolve motions challenging personal
3 jurisdiction over the drivers against whom Uber has or will file cross-complaints.

4 Additionally, determining the proper forum for all cases is a necessary gating item before
5 additional steps in the litigation, such as identifying a narrowed pool of cases that should proceed
6 first toward trial, can proceed. Prior to the eventual selection of bellwether cases (at the
7 appropriate time), the Parties must have an understanding of where cases will be tried and what
8 laws will apply. Only then will the Parties and the Court be in a position to assess the
9 representativeness of potential bellwether selections in terms of the cases that will be tried in this
10 venue (if any), and the cases that will be tried in their proper home forums—and to determine
11 how those cases will be selected to facilitate broader resolution of the MDL. Thus, Plaintiffs get
12 it exactly backwards when they suggest that the Court should “resolve venue questions” in those
13 cases already selected by the Court as trial candidates. Questions about forum and applicable law
14 are prerequisites to selecting representative trial cases, not something to be determined *after* their
15 selection. As such, the forum question should be resolved across all cases involving alleged
16 incidents which occurred in states other than California and where the alleged driver resides
17 outside California. And Uber believes that now is the time for the Court to address the proper
18 forum of the MDL cases via motions for entry of an order of transfer to the proper trial forum
19 pursuant to 28 U.S.C. § 1404(a).

20 Plaintiffs’ further argue at length as to why they think some Plaintiffs may have
21 arguments to resist enforcement of the Forum Selection Clause in the Terms of Use. Though
22 there are significant problems with their position, that is what Motions to Transfer will address.
23 In any event, Plaintiffs’ position ignores that transfer will be based not only on the Forum
24 Selection Clause (where it was agreed to) but also based on the principles of *forum non*
25 *conveniens* embodied in 28 U.S.C. § 1404(a). Under those very principles, and regardless of the
26 Forum Selection Clause, Judge Schulman ruled that cases involving incidents outside California
27 should be transferred to those venues for pretrial and trial proceedings. See Order on Defendants
28 and Cross-Complainants Uber Technologies, Inc. and Raiser LLC’s Motion to Stay or Dismiss

1 Based on *Forum Non Conveniens, In re Uber Rideshare Cases*, No. CJC-21-005188, at 15 (Cal.
 2 Super. Jan. 23, 2023) (“Allowing Plaintiffs’ case to remain in California, although they will likely
 3 be governed by the regulatory and tort laws . . . [in] the states where the Plaintiffs were allegedly
 4 injured, would undermine th[e] interest [in avoiding unnecessary conflicts of laws].”); *id.* (“In
 5 general, California courts have little or no interest in litigation involving injuries incurred outside
 6 of California by nonresidents (citation omitted)).

7 Plaintiffs also do not accurately present the record of evidence embodied in the Terms of
 8 Use motion regarding evidence of assent to and enforceability of the contract. Uber showed in its
 9 motion, and then again in its reply, a thorough evidentiary record of assent and enforceability.
 10 Plaintiffs dispute the legal conclusions that flow from that evidence, and the Court will need to
 11 resolve that dispute. But the need for such resolution is exactly why a process for motions to
 12 transfer, including based on the Forum Selection Clause, should be established sooner than the
 13 conclusion of pretrial proceedings.

14 Plaintiffs hypothesize an “en masse” transfer motion against “hundreds of Plaintiffs at
 15 once,” but that is not at all what Uber is proposing. The JCCP court, for instance, recognized -
 16 “[i]t seems to me that before I start dealing with issues like a master complaint, like short form
 17 complaints, like fact sheets and like merits discovery, we need to know what cases are going to be
 18 here and what cases are not going to be here.” JCCP CMC Tr. 18:15-19. Based on this, the JCCP
 19 court established a procedure whereby Uber would move in two individual actions with patterns
 20 resembling those of a broader array of cases. Uber filed those two motions in individual cases, the
 21 Parties made their record in individual cases, and the JCCP court adjudicated those facts and legal
 22 arguments promptly. The Parties then stipulated that the Court’s analysis and conclusions would
 23 be the subject of an order applying to other cases with substantially similar fact patterns for
 24 purposes of the transfer issues. That procedure, or a similar one, would be entirely appropriate
 25 here. In any event, there is not a proposal for an “en masse” or “global” motion, as these are
 26 individual cases (not a class action). A conversation about the precise details of how and when
 27 transfer motions will be litigated is warranted now, not down the road after the Court and the
 28

1 Parties are embroiled in litigation as to the MDL court’s ability to exercise personal jurisdiction
2 over cross-defendant drivers.

3 **Plaintiffs’ Position:** The Court should reject Uber’s request to adjudicate nearly 1,400
4 motions to transfer,⁵ and instead resolve venue issues in selected trial candidates, and otherwise at
5 the conclusion of the MDL proceedings.

6 In its order denying Uber’s Terms of User Motion, the Court indicated it would
7 “adjudicate motions to transfer” cases filed in the Northern District of California “at the
8 appropriate time—likely at the conclusion of the proceedings.” ECF 543 at 36. With nothing
9 material changed, Uber asks the Court to revisit that conclusion and decide now the proper trial
10 forum for 1,400 cases. Uber does not justify that use of the Court’s or the parties’ time.

11 *First*, the Court should be hesitant to hear any transfer motions directed at cases en masse.
12 When Uber filed its TOU motion, it confidently told the Court that “[t]here can be no doubt” that
13 29 Plaintiffs affirmatively and unambiguously assented to a version of the TOU containing a
14 forum selection clause. ECF 257 at 2. In response, the 29 Plaintiffs pointed out that most of
15 them had been assaulted, and several had put Uber on notice of their intent to sue, before the
16 clause was added to the TOU. ECF 341 at 7. In addition, for 24 of the 29, Uber had failed to
17 establish that they had assented to a revised TOU before filing California lawsuits. *Id.* Nor did
18 Uber acknowledge the uncomfortable fact that Plaintiffs are required to access their Uber App to
19 comply with Court-ordered discovery, hardly voluntary assent. *Id.*

20 On reply, it turned out there was fact some “doubt.” Remarkably, in a footnote, Uber
21 withdrew its motion as to three Plaintiffs with respect to whom it “determined ... have differing
22 fact patterns.” ECF 393 at 6 n.7. Uber did not elaborate on what kinds of “differing fact
23 patterns” it apparently concedes materially affect the enforceability of the forum selection clause.
24 Then, in response to some of Plaintiffs’ assent arguments, Uber, for the first time on reply, argued
25 some Plaintiff assented to forum selection for their sexual assault claims by ordering food through
26 “UberEATS.” *Id.* at 7. That the TOU for one App unambiguously govern claims arising from

27 _____
28 ⁵ The vast, vast majority of claims involve out-of-state plaintiffs whose assaults also occurred out of state.

1 use of another App is simply assumed, but hardly self-apparent.

2 Uber also argued that the TOU by their terms apply retroactively, but ignored entirely
3 Plaintiffs’ explanation of how those facts (such as when a person was assaulted, and whether they
4 sent Uber a pre-filing notice letter) play into the Court’s evaluation of the clause under the
5 “fundamental fairness” test. *Id.* at 7-8. Indeed, Uber did not even acknowledge the relevant legal
6 standards courts apply to such clauses, including fairness, overreach, “affected by fraud,” or bad
7 faith, or discuss the cases Plaintiffs cited on this point. *See* ECF 341 at 17-20 (Plaintiffs
8 discussing this analysis in depth).

9 The point is this: Uber tried to move cases en masse and it did not work. Uber’s “no
10 doubt” approach to assent raised more questions than answers under even modest scrutiny. In
11 response to arguments for why the clause was unenforceable—arguments that, depending on how
12 the Court views them, may yield different outcomes in different cases—Uber simply ignored
13 facts and controlling legal authority it did not like. Uber does not explain why the Court should
14 entertain another attempt at this dubious approach.

15 *Second*, Uber says the court should decide a global motion to transfer now because Uber
16 wants to sue third-party drivers and some of those drivers might file personal jurisdiction
17 motions. To start, Uber’s position rests on speculation: that it can find drivers, that it can serve
18 them, that, once served, those drivers will object to jurisdiction here, and that Uber will actually
19 find it worthwhile to sue likely judgment-proof individuals. Indeed, to date, Uber has not filed
20 claims against *any* drivers in *any* MDL cases, even though there is no impediment to doing so.
21 More to the point: even accepting Uber’s hypotheticals as certain, nothing prevents Uber from
22 filing third-party complaints in appropriate venues and then tagging those cases with the JPML
23 for inclusion here for pretrial purposes. Whether a driver’s location affects where a trial should
24 occur is not at issue yet, and may never be at issue. *See, e.g., Andrade v. Station Casinos LLC*,
25 2021 WL 4441990, at *2 (N.D. Cal., Mar. 22, 2021) (“It has long been the rule that it is not
26 necessary for all joint tortfeasors to be named as defendants in a single lawsuit.”) (citation
27 omitted). That the Court may face some unspecified number of (simple) personal jurisdiction
28 motions does not alone justify spending time and resources on hearing a global motion to transfer.

1 Instead, the Court should hear motions to transfer in individual cases only at the
2 appropriate time. That may be, as the Court predicted, at the conclusion of the proceedings. Or,
3 if the Court selects trial candidates filed here but arising from incidents in other states, then it will
4 make sense to resolve venue questions for those. Or, Uber may make some actual showing of
5 need in a given case. Uber's approach—move against all cases at once, ignore inconvenient
6 facts, and brush aside legal standards that require application of those facts—did not work the
7 first time and is unlikely to be any better the second.

8 **V. Additional Discovery Requests**

9 **Defendants' Position:** Uber respectfully requests that the Court lift the current prohibition
10 set forth in Pre-Trial Order 5 on seeking discovery from Plaintiffs beyond the Plaintiff Fact
11 Sheet. Uber requests that the Court amend Pre-Trial Order 5 to allow Uber to serve written
12 interrogatories on individual plaintiffs in order to appropriately explore the claims brought against
13 it and to develop its defenses to those claims. Uber anticipates that these interrogatories would
14 request information such as a further explanation of Plaintiffs' alleged damages and a summary of
15 communications Plaintiffs had regarding their alleged incidents, among other requests.

16 Additionally, or in the alternative, Uber requests that the Court allow for Uber to seek
17 additional discovery from Plaintiffs through a supplement to the Plaintiff Fact Sheet, requiring
18 Plaintiffs to provide limited additional information and to produce relevant documents that may
19 exist based on Plaintiffs' responses to questions in the existing Plaintiff Fact Sheet. For example,
20 these documents may include, among others, social media posts that Plaintiff made regarding the
21 incident (which Plaintiffs were required to report the existence of as part of Plaintiff Fact Sheet
22 Question 29), or communications notifying Uber, law enforcement, healthcare professionals, or
23 mental health professionals about the incident (which Plaintiffs were required to report as part of
24 Plaintiff Fact Sheet Question 25).

25 Instead of addressing Uber's request for additional discovery from Plaintiffs, Plaintiffs
26 attempt to deflect by discussing their complaints about Uber's discovery. Regardless, to Plaintiffs'
27 note about the PFS authorizations, Uber actually is in the process of executing on those
28 authorizations. In fact, the additional discovery from Plaintiffs that Uber is requesting here would

1 be tremendously helpful in prioritizing and executing that process. To date, Uber has received
2 PFSs from only 951 of the 1,425 Plaintiffs (66.7%), and many of those PFSs are deficient. But
3 even if all Plaintiffs were to provide complete PFSs, the additional discovery is needed to help
4 prioritize selections not only for pursuing records via authorizations but also for potential
5 bellwether selections or even for case-resolution purposes.

6 Finally, many of Plaintiffs' claims were filed several years ago. With the passage of time,
7 document preservation becomes increasingly difficult, particularly for individuals who may not be
8 familiar with typical litigation requirements. Allowing for the production of additional limited
9 documents relating to information Plaintiffs have already provided in the Plaintiff Fact Sheet would
10 ameliorate this document preservation concern, in addition to providing Uber appropriate
11 information regarding the claims being brought against it.

12 **Plaintiffs' Position:** Uber requests that the Court open full-blown case-specific discovery
13 for all cases at once. But Uber has struggled and failed to meet even existing deadlines for common
14 discovery. The Court ordered the September 1, 2024 deadline for substantial completion of
15 documents in response to Plaintiffs' First Set of RFPs back on December 28, 2023. ECF No. 175.
16 Judge Cisneros has had to grant Uber multiple extensions with regards to custodial productions in
17 response to First RFPs. *See, e.g.*, ECF 1629. This follows Uber missing the deadline for its PTO
18 5 "off the shelf" productions by several months: the Court ordered both sets of productions done
19 by February 8, but Uber did not complete those productions until May 31 (and then littered those
20 productions with unauthorized redactions requiring wasteful briefing, and after court order,
21 reproduction). *See* ECF No. 767. The parties have plenty to do right now without conducting
22 additional written discovery in 1,400 cases (especially considering the information Uber is already
23 getting from the PFS). Indeed, the parties are continuing to meet and confer over many deficiencies
24 in *Uber's* DFS productions, leaving Plaintiffs still without much of the basic, core information in
25 each case.

26 Uber's alternative proposal to seek additional discovery through a supplement to the
27 Plaintiff Fact Sheet would not ameliorate the issues caused by allowing individualized discovery
28 to proceed in 1,400 cases. Producing social media posts or sensitive communications in all

1 individual cases would do nothing to move this litigation forward. Moreover, all plaintiffs who
2 indicate they disclosed their assault to health providers or law enforcement are required to
3 produce signed authorizations to release health and law enforcement records, so Uber is already
4 able to obtain much of the information it claims to now seek. Yet, to date, it does not appear that
5 Uber has endeavored to obtain any of these records. Uber's concerns about document
6 preservation likewise fall flat. As is true in any litigation, Plaintiffs' counsel understand the
7 obligation to preserve relevant documents, and will do so regardless of whether such documents
8 are produced to Uber now or at a later date. The most practical solution to Uber's concerns is to
9 move a set of cases forward to trial and open discovery on those cases. In the meantime, the
10 parties can and should continue to meet and confer and resolve or involve the court in disputes
11 over deficiencies in PFS and DFS productions (recognizing that both sides have granted
12 extensions on a number of cases).

13 **VI. General Discovery Updates**

14 The Parties were before Judge Cisneros for a discovery status conference on October 23,
15 2024. *See* ECF Nos. 1785 (Minute Entry summarizing topics discussed), 1777 (10/18/24 Joint
16 Discovery Status Report).

17 The Parties also filed a joint letter brief on October 28, 2024 regarding Uber's global
18 objections related to PFS issues, including timing of verifications, questions in the PFS that seek
19 third-party contact information, and notations that the Plaintiff will supplement certain responses.
20 ECF No. 1803.

21 **Plaintiffs' Position:** One issue that has arisen involves the voluminous number of
22 purportedly privileged documents Uber has withheld from the custodial files for witnesses set for
23 deposition. Some privilege log entries range from 30%-70% of the custodial file produced.
24 Unfortunately, and in part due to the large number of documents withheld, the parties have not
25 been able to resolve their disputes or fully present them to Judge Cisneros for ruling in time for
26 the JCCP-noticed depositions of these witnesses. This issue, in turn, has impaired MDL
27 Plaintiffs' ability to coordinate. On October 30, 2024, Judge Cisneros issued Pretrial Order No.
28

1 20 setting production and privilege dispute deadlines for the second, third, and fourth⁶ tranches of
2 Uber custodians. ECF No. 1808. PTO 20 anticipates that depositions of Tranche 4 custodians will
3 begin by approximately March 24, 2025 and may be completed by April 24, 2025. *Id.* at 10.
4 Though this Court originally ordered Uber to complete substantial production of documents in
5 response to Plaintiffs' first set of requests for production by September 1, 2024, the deadline for
6 the last tranche of custodial production is now January 3, 2025. *Id.* at 9.

7 Plaintiffs take all allegations of fraud seriously, and the PSC is committed to conferring
8 with Uber to take action if indeed there are any such incidents in this MDL. Contrary to its claim
9 below, Uber has not provided the PSC with hundreds of instances where it cannot find record of
10 the trip where the alleged sexual assault occurred. To date, that number appears to be relatively
11 small, and the PSC and individual counsel are conferring with Uber to address the issues where
12 possible. At this stage, there is no request for the Court to take any action on these issues.

13 **Defendants' Position:** First, one issue that has arisen is the number of Plaintiffs whose
14 purported Uber rides remain unsubstantiated. In these cases, Plaintiffs have not provided
15 information that has enabled Uber to locate a matching trip. This includes a subset of cases where
16 Uber has concerns about the potential fraudulent nature of Plaintiffs' submissions. This issue is
17 one that is growing, not shrinking. Uber estimates that hundreds of Plaintiffs in this MDL will have
18 unsubstantiated Uber rides. This is a matter of serious importance as it impacts the Parties' ability
19 to move this litigation forward. The Parties are meeting and conferring to discuss proposals for
20 how it should be handled.

21 Second, Plaintiffs assert that Uber has sought or been granted multiple extensions for
22 document productions, but decline to provide the Court essential context for substance and timing,
23 nearly all which was at Plaintiffs' behest. Though Uber does not wish to re-hash issues long
24 resolved, it does want an accurate record. As an initial matter, Uber complied with the production
25

26 ⁶ The parties filed a joint letter brief regarding a sample of disputed privilege log entries from the
27 first tranche on October 30, 2024. ECF No. 1812. PTO 20 notes that deadlines related to this
28 tranche of custodians will be addressed in the Court's order resolving that dispute. ECF No. 1808
at 6.

1 deadline for PTO 5 and produced 101,300 documents from 87 prior litigations and government
 2 investigations within a seven-day time period on March 8, 2024. Further, with regard to the Court's
 3 September 1, 2024 date for substantial completion, the Parties were still negotiating custodians
 4 beyond that date, and the custodians were finalized only recently on October 11, 2024. Further,
 5 Judge Cisneros ordered Uber to complete custodial productions for the first nine agreed custodians
 6 by September 15, 2024. As additional custodians have been agreed upon and dates for depositions
 7 scheduled, Uber has met each of its production and privilege log deadlines set by the Court or
 8 otherwise stipulated between the Parties.

9 Uber disagrees with Plaintiffs' characterizations regarding the volume of documents on
 10 privilege logs, which does not provide any context or acknowledgement, for example, that the
 11 custodians for whom privilege logs have been provided are some of those most likely to have
 12 interacted with counsel. *See* Oct. 23, 2024 Discovery Status Conf. Tr. At 13:21-15:1. Moreover,
 13 Uber has not withheld the percentages of documents Plaintiffs represent. There is no custodian for
 14 whom Uber is withholding nearly 70% of their responsive documents. In any event, there is never
 15 an expectation in litigation that all privilege disputes must be resolved before a deposition can
 16 occur. Indeed, JCCP Plaintiffs' counsel who are also on MDL Plaintiffs' leadership are receiving
 17 the same privilege logs and are proceeding with taking and scheduling depositions in the JCCP
 18 without first resolving these privilege disputes.

19 **VII. Discovery Coordination Order**

20 **Defendants' Position:** Coordinating discovery in this MDL with the JCCP for overlapping
 21 document production and cross-noticed depositions will save significant resources and align with
 22 the principles of Federal Rule of Civil Procedure 1. Coordination between related actions involving
 23 similar allegations is important given the complexities of witness scheduling and the need to
 24 balance the disruption to the daily lives of the deponents with the requirements of the litigation.
 25 Further, MDL courts commonly enter coordination orders to avoid unnecessary duplication of
 26 efforts and to promote the efficient and speedy resolution of the litigations. *See, e.g.,* Case
 27 Management Order No. 9: Joint Coordination Order, *In re Juul Labs, Inc. Mktg., Sales Practices,*
 28 *& Prods. Liab. Litig.*, No. 3:19-md-02913-WHO (N.D. Cal. May 20, 2020) (Dkt. 572); Pretrial

1 Order No. 13: Coordination Order, *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, &*
 2 *Prods. Liab. Litig.*, No. 3:15-md-02672-CRB (N.D. Cal. Feb. 25, 2016) (Dkt. 1256).

3 Since May of this year, the Parties have been working on a proposed order that supports
 4 coordination between the MDL and JCCP. JCCP Plaintiffs conveyed to Judge Schulman their
 5 agreement on the overall principles of coordination and cooperation, including a single deposition
 6 for Uber employees deposed in both the MDL and JCCP. *See* Feb. 2, 2024 JCCP Informal
 7 Discovery Conf. Tr. at 83:11-18 (“It would be in the best interest of all of the plaintiffs and Uber
 8 to be more coordinated We need to have one deposition per side.”). In the MDL, the Parties
 9 have endorsed coordination through multiple joint status reports and during conferences with the
 10 Court. *See, e.g.*, Aug. 30, 2024 Discovery Status Conf. Tr. at 20:17-21:1 (“**And I think that will**
 11 **help us streamline the approach and get things done in time for -- for these depositions, which**
 12 **are important to coordinate.” “It is important to all parties including the JCCP to**
 13 **coordinating and get this, you know, moving towards deposition.”**); Oct. 1, 2024 Discovery
 14 Status Con. Tr. at 9:6-12 (“Just to provide you an update in terms of coordination on depositions,
 15 I believe there are eight deposition[s] that have been scheduled to date, and out of those eight
 16 depositions six -- **we’re going to coordinate on all the depositions, . . . So we are coordinating**
 17 **with the JCCP on these depositions.”**).⁷ And Judge Cisneros stated in August the Court’s desire
 18 for the Parties to hash out any issues regarding the draft coordination order. *See* Aug. 8, 2024
 19 Discovery Status Conf. Tr. at 26:21-28:4. Judge Cisneros has also issued multiple orders that
 20 support coordination and aligning schedules with the JCCP, including a recent order setting out a
 21 schedule for document production. *See, e.g.*, ECF Nos. 771, 866, 1747, 1808 (“To determine how
 22 to advance discovery in this MDL, the Court has considered the parties’ proposals, as well as how
 23 to maximize the opportunity for coordinated depositions between this MDL and the JCCP.
 24 Coordination will reduce the likelihood of duplicative depositions, and in general discovery of
 25

26 ⁷ *See also, e.g.*, ECF Nos. 1746 (dated October 11, 2024), 1774 (dated October 17, 2024); Jan. 19,
 27 2024 Case Management Conf. Tr. at 22:10-13 (“Leadership on the plaintiffs’ side for the MDL
 28 and the JCCP have started coordinating their efforts with respect to ESI to avoid duplication on
 how that process goes about”).

1 custodial records should be completed before a custodian is deposed.”).

2 The last step is to enter the related proposed coordination orders in the MDL and JCCP.
3 The Parties have met and conferred on multiple occasions over many months related to these
4 companion orders, but Plaintiffs have refused to acknowledge agreement on the final terms and
5 entry of an order, even though Uber accepted all of the terms that Plaintiffs proposed many months
6 ago. And MDL Plaintiffs have refused to even submit the current coordination proposal, which
7 encompasses all those terms, to the Court in the joint status reports.

8 Plaintiffs’ new excuse that privilege disputes should delay entry of a discovery coordination
9 order rings hollow. Privilege disputes are not uncommon in MDLs and do not provide a
10 justification to continue kicking the can down the road on entering a discovery coordination order,
11 the contours of which have been in place since May. Further, contrary to Plaintiffs’ suggestion
12 otherwise, MDL courts regularly enter discovery coordination orders when the litigations being
13 coordinated “are at various stages of progress.” *See, e.g.,* Joint Coordination Order, *In re New*
14 *Motor Vehicles Canadian Export Antitrust Litig.*, No. 2:03-md-01532-DBH (D. Me. Apr. 28, 2004)
15 (Dkt. 110).

16 Uber requests that the Court order a deadline of November 8, 2024 for the Parties to submit
17 a proposed coordination order. If the Parties cannot reach agreement on the exact terms of the
18 coordination order, the Parties should be ordered to submit competing versions of the proposed
19 coordination order by this deadline.

20 **Plaintiffs’ Position:** Uber’s demand for joint or competing proposed orders on
21 coordination by November 8 is inappropriate, premature and an end-run around the process
22 already underway before Judge Cisneros.

23 Coordination issues are not new; since the inception of this MDL, the JCCP discovery
24 deadlines were well-known to all parties. To facilitate taking depositions together, the PSC has
25 made best efforts to move discovery along, and Judge Cisneros has resolved numerous disputes
26 and even supervised in-person sessions to expedite resolution of issues that rarely involve judicial
27 involvement, such as number and identity of custodians. This process remains underway and
28 under Judge Cisneros’ close supervision, the PSC anticipates it will be able to coordinate certain

1 depositions going forward, consistent with the Deposition Protocol, PTO 16 at 8.

2 While coordination is useful, it takes best efforts from both sides, and is only appropriate
 3 if it does not prejudice either party. MDL Plaintiffs continue to have significant concerns about
 4 prejudice, especially given the numerous disputes over the custodial files of Uber's witnesses. For
 5 example, the Parties currently dispute Uber's over-designation of privileged materials in the
 6 custodial files of deponents. MDL Plaintiffs cannot agree to take single depositions of Uber's
 7 witnesses when they maintain that Uber is withholding relevant documents in advance of these
 8 depositions. Judge Cisneros is capably addressing these disputes, including a recent order setting
 9 new deadlines for production and privilege review of custodial files. ECF 1808. Until these issues
 10 are resolved, a coordination order is premature and improper.

11 The differing timelines and schedules in the MDL and JCCP make this case very different
 12 from the *Juul* and *Volkswagen* MDLs, where the litigations began at the same time. The PSC
 13 understands that the parties in the JCCP may agree to extend their discovery cut-off past January
 14 15,⁸ which, along with the accelerated privilege dispute deadlines ordered by Judge Cisneros, could
 15 make coordination more feasible and appropriate. But MDL Plaintiffs should not be jammed into
 16 taking depositions before they have the full custodial files to which they are entitled under this
 17 Court's Pretrial Orders.

18 **VIII. Order Regarding Time Period for Discovery**

19 On October 31, 2024, Magistrate Judge Cisneros issued a discovery order expanding the
 20 time scope of custodial discovery that Plaintiffs may seek against Uber, but declining to identify
 21 dates for either the start or end of the discovery period. *See* ECF 1816. Uber is evaluating that
 22 Order and may seek the Court's review.

23 **IX. Cases Where Plaintiffs' Counsel Withdrew**

24 **Defendants' Position:** The Court has granted several motions to withdraw as counsel for
 25 various Plaintiffs, as shown in the chart below. When the Court granted these motions, it ordered
 26 Uber to send the order to the relevant Plaintiff and explained that if Plaintiffs did not, within "28

27 _____
 28 ⁸ JCCP Liaison Counsel has advised that Uber has not agreed to the JCCP leadership's proposals for extensions nor provided any proposals for an extension.

days of this order,” “file a notice indicating whether they intend to pursue the action with new counsel or representing themselves,” the Court would dismiss their case. Uber complied with the Court’s orders and the deadlines for these Plaintiffs to file notice have passed without any such filings. Therefore, the Court should dismiss these cases at this time.

| Plaintiff Pseudonym | MDL Case Number | Order ECF Number | Order Date | Uber Declaration ECF Number | Deadline for Filing Notice |
|---------------------|-----------------|------------------|------------|-----------------------------|----------------------------|
| M.H. | 3:23-cv-06200 | 1649 | 9/16/2024 | 1665 | 10/14/2024 |
| K.H. | 3:24-cv-02840 | 1675 | 9/26/2024 | 1709 | 10/24/2024 |
| Z.W. | 3:24-cv-02844 | 1675 | 9/26/2024 | 1709 | 10/24/2024 |
| S.A. | 3:24-cv-02845 | 1675 | 9/26/2024 | 1709 | 10/24/2024 |

Additionally, in *A.P. v. Uber Technologies, Inc.*, No. 3:23-cv-06357-CRB, the Court ordered counsel to refile its motion to withdraw on the main MDL case docket, and that motion was refiled on September 30, 2024, ECF 1683. The motion has not yet been granted.

In *T.S. v. Uber Technologies, Inc.*, No. 3:24-cv-00635-CRB, the Court granted counsel’s motion to withdraw on May 6, 2024. The Court neither ordered Uber to provide the order to Plaintiff nor indicated whether the case would be dismissed after a 28-day period if Plaintiff did not file notice of their intent to proceed. Nevertheless, Uber attempted to send Plaintiff T.S. the Court’s order in both July and August and has not received a response. Uber requests that the Court either dismiss the case for failure to prosecute or enter an order compelling T.S. to file notice of Plaintiff’s intent to proceed within 28 days or face dismissal.

There are other motions to withdraw pending on the Court’s docket—ECF 1806 and 1807—and Plaintiffs’ counsel has advised Uber that several additional motions may be forthcoming. Given the increasing number of withdrawal applications that Plaintiffs’ counsels are submitting to the Court, Uber believes a more uniform and centralized process would be to the Parties’ and the Court’s benefit. The Parties have been meeting and conferring regarding such a process for counsel to withdraw in the future, and Plaintiffs’ leadership suggested a Stipulation and Proposed Order. Plaintiffs’ leadership has since retreated and now expresses the view that a global

1 process is not needed. Uber continues to believe Plaintiffs' leadership's original suggestion of an
2 orderly process for addressing these issues is a good one. Uber has made a few slight revisions to
3 the papers Plaintiffs sent and has attached clean versions of the proposal at **Exhibit B**, as well as a
4 redline against Plaintiffs' initial version at **Exhibit C**. Uber respectfully requests that the Court
5 adopt **Exhibit B** and Plaintiffs' leadership's initial proposal for all cases where counsel wishes to
6 withdraw moving forward.

7 **Plaintiffs' Position:** The Court should not adopt Uber's proposal. While the Court has
8 indicated it would dismiss non-responsive plaintiffs' cases *without* prejudice (*e.g.*, ECF 1675),
9 Uber's proposal would dismiss such cases with prejudice. Although the Parties had discussed a
10 global procedure for unresponsive plaintiffs, the Court has been handling motions to withdraw on
11 an individualized basis. If the Court is satisfied with this process, Plaintiffs believe this procedure
12 is working efficiently and does not require alteration through stipulation. There is no evident
13 benefit to implementing a new global procedure. The PSC has been advising Plaintiffs' counsel
14 regarding the procedure and providing guidance and resources as needed.

15 Plaintiffs would welcome the Court's guidance concerning the resulting *pro se* plaintiffs,
16 and are willing to continue to meet and confer with Uber over the same. In particular, Plaintiffs
17 believe—as the Court specified in its orders on the motions to withdraw, *see* ECF 1649, 1675—
18 that dismissals after counsel withdrawals should be without prejudice and with a long grace
19 period. Such procedure is appropriate in these cases brought by sexual assault survivors, who
20 may become temporarily unresponsive as they grapple with the trauma resulting from the subject
21 incidents. If Uber can agree to these terms, and the Court would prefer a PTO to cover this
22 process, Plaintiffs will work with Uber to enter a proposed order promptly.

23 **X. Special Settlement Master**

24 On November 15, 2023 (ECF No. 88), the Parties jointly submitted a narrowed list of two
25 suggested candidates for Special Settlement Master: Hon. Gail Andler and Hon. Shelley
26 Chapman, and they remain open to considering additional candidates. The Parties welcome the
27 Court's guidance on appropriate next steps in arranging for appointment of a Special Settlement
28 Master.

XI. Next Case Management Conference

The Parties look forward to discussing the Court's availability for the next case management conference.

Dated: November 5, 2024

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FILER'S ATTESTATION

I, Randall S. Luskey, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

Dated: November 5, 2024

By: /s/ Randall S. Luskey
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